



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

DEC 7 2004

Mike D. Crotts  
P.O. Box 1718  
McDonough, GA 30253

Vickie Gibbs, Treasurer  
Mike Crotts for Congress Committee, Inc.  
P.O. Box 1718  
McDonough, GA 30253

RE: MUR 5623  
Mike D. Crotts  
Mike Crotts for Congress Committee, Inc. and  
Vicki Gibbs, as treasurer

Dear Mr. Crotts and Ms. Gibbs:

On November 30, 2004, the Federal Election Commission found that there is reason to believe Mike Crotts for Congress Committee, Inc., ("the Committee") and Vicki Gibbs, as treasurer, violated 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R. § 400.21(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Additionally, the Commission found that there is reason to believe that Mike D. Crotts violated 2 U.S.C. §§ 441a-1(b)(1)(B) and 441a-1(b)(1)(C). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

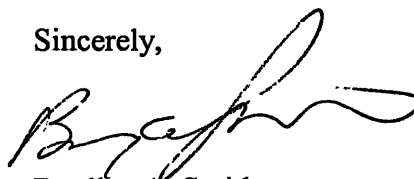
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Peter Blumberg, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith  
Chairman

Enclosures  
Factual and Legal Analysis  
Procedures  
Designation of Counsel Form  
Conciliation Agreement

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# FEDERAL ELECTION COMMISSION

## FACTUAL AND LEGAL ANALYSIS

**RESPONDENTS:** Mike Crotts for Congress Committee, Inc. **MUR:** 5621  
and Vicki Gibbs, as treasurer  
Mike D. Crotts

### I. INTRODUCTION

This matter was initiated by the Federal Election Commission pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. This matter concerns new reporting requirements, arising under the so-called "millionaires' amendment" of the Bipartisan Campaign Reform Act, which obligate candidates to comply with special reporting and notification requirements after expending personal funds in excess of certain thresholds.

### II. FACTUAL AND LEGAL ANALYSIS

#### A. Background

Mike D. Crotts declared his candidacy for Georgia's Eighth District seat in the United States House of Representatives to the Federal Election Commission on July 8, 2003 by filing an FEC Form 2, Statement of Candidacy. The Form 2 requires candidates to submit a "declaration of intent to expend personal funds," which Mr. Crotts failed to complete with his filing. Consequently, on July 29, 2003, the Reports Analysis Division sent him a letter notifying him of his failure to complete that section of Form 2 and requested that he send in a revised form. On September 17, 2003, Mr. Crotts submitted an amended Form 2, declaring his intent not to spend personal funds in excess of \$350,000 in his primary or general elections.<sup>1</sup>

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<sup>1</sup> Expenditures from personal funds exceeding \$350,000 require House candidates to comply with special filing and notification requirements and may entitle the candidate's opponents to higher contribution and coordinated expenditure limits. See 2 U.S.C. § 441a-1(a)(1) and 2 U.S.C. § 441a-1(b)(1)(C).

Mr. Crotts made a \$400,000 loan to the Committee on March 31, 2004.<sup>2</sup> By expending over \$350,000, the Committee and candidate were obligated to file with the Commission and with Mr. Crotts' opponents an FEC Form 10, Notification of Expenditures from Personal Funds within 24 hours of the threshold expenditure, or by April 1, 2004. Following disclosure of the loan in the Committee's April Quarterly Disclosure Report, the Reports Analysis Division ("RAD") sent a letter reminding the Committee of the special filing requirement on April 20, 2004. The Committee filed the required statement with the Commission 47 days late, on May 18, 2004.

In follow-up conversations with RAD, the Committee acknowledged that it failed to timely file the FEC Form 10, claiming that the failure was due to an oversight on the part of the treasurer. The Committee also acknowledged that it had not filed a statement with the candidate's opponents, citing a lack of contact information. RAD provided contact information to the Committee to enable it to make the appropriate additional filings, but RAD never received confirmation on whether the filings with the opposing candidates were completed.

## **B. Analysis**

Within 15 days of becoming a candidate to the U.S. House of Representatives, a candidate must file a declaration stating the total amount of expenditures from personal funds

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<sup>2</sup> Mr. Crotts reported making four other loans prior to the \$400,000 loan that triggered the reporting requirement. Two loans for a total of \$13,400 were made in the summer of 2003 before the declaration to expend personal funds was filed. The loans of \$10,000 on July 3, 2003 and \$3,400 on August 11, 2003 were repaid in September 2003. The candidate loaned the Committee \$20,000 on February 12, 2004 and \$16,500 on March 26, 2004.

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that the candidate intends to make with respect to the election that will exceed \$350,000 (FEC Form 2). 2 U.S.C. § 441a-1(b)(1)(B); 11 C.F.R. § 400.20. An expenditure from personal funds includes direct contributions as well as loans made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee. 2 U.S.C. § 441a-1(b)(1)(A); 11 C.F.R. § 400.4. If a candidate makes an aggregate amount of expenditures from personal funds in excess of \$350,000, the candidate or authorized committee shall file a notification of the expenditure within a day of exceeding the threshold (FEC Form 10). 2 U.S.C. § 441a-1(b)(1)(C); 11 C.F.R. § 400.21(b).<sup>3</sup> For each additional expenditure of \$10,000 or more, the candidate is required to file additional notifications.<sup>4</sup> 2 U.S.C. § 441a-1(b)(1)(D); 11 C.F.R. § 400.22. These notifications must be filed with the Commission and with each candidate in the same election and the national party of each such candidate. 2 U.S.C. § 441a-1(b)(1)(F); 11 C.F.R.

The Respondents' notification of spending over \$350,000 was not filed in this case until 47 days after the deadline and almost a month after a RAD inquiry. To date, it is still unknown whether the appropriate filings were made with the opponents of Mr. Crotts. Accordingly, there

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<sup>3</sup> A candidate's personal expenditures could entitle his opponents to a threefold increase in the contribution limit under 2 U.S.C. § 441a(a)(1)(A)) and a waiver of the limits on coordinated party expenditures under 2 U.S.C. § 441a(d). See 2 U.S.C. § 441a-1(a)(1); 11 C.F.R. § 400.41. Candidates are entitled to higher limits when the "opposition personal funds amount" exceeds \$350,000. The opposition personal funds amount is distinct from the threshold reporting amount of \$350,000 because it takes into account the personal funds expenditures of the other candidates and, depending on the date of calculation, may also take into account the gross receipts of both candidates. 2 U.S.C. § 441a-1(a)(2), 11 C.F.R. § 400.10. A candidate with a significant "gross receipts advantage" is less likely to qualify for the higher limits. See 2 U.S.C. § 441a-1(a)(2)(B)(ii), 11 C.F.R. § 400.10. Similarly, a candidate seeking higher limits may be limited by the amount of personal funds that he or she expended. See 11 C.F.R. § 400.10

<sup>4</sup> The initial notification and additional notifications must include the date and amount of the expenditures and the total amount expended as of the date of the filing. 2 U.S.C. § 441a-1(b)(1)(E); 11 C.F.R. § 400.23.

is reason to believe that Mike Crotts for Congress Committee, Inc. and Vicki Gibbs, as treasurer, violated 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R. § 400.21(b). Since the regulations place a requirement on the candidate to ensure that the appropriate filings are made with respect to his expenditures from personal funds, there is reason to believe that Mike D. Crotts violated 2 U.S.C. § 441a-1(b)(1)(C).

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An additional violation appears to have occurred with respect to the filing of the declaration of intent to expend personal funds. 2 U.S.C. § 441a-1(b)(1)(B). The candidate completely omitted the personal funds declaration on his original statement of candidacy, addressing it only after RAD inquiries, and failed to timely file the appropriate notifications when he exceeded the relevant threshold personal funds expenditure. The declaration, which is due within 15 days of the commencement of a candidacy, was filed on September 17, 2003, over two months after the candidate's initial statement of candidacy was filed on July 8, 2003.<sup>5</sup> Accordingly, there is reason to believe that Mike D. Crotts violated 2 U.S.C. § 441a-1(b)(1)(B).

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<sup>5</sup> The late-filed declaration stated that Mr. Crotts would make no expenditures above the threshold amount